TL1822-16

KEYNOTE SPEECH FOR THE ASIA-PACIFIC CONFERENCE FOR EAST TIMOR

by

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1 June 1994

INTRODUCTION

The circumstances that attended the mounting of this conference reflect so vividly the panorama of contentiousness prevailing in the global community regarding the East Timor situation.

That we have persisted in holding this conference despite the climate of inhibitions foisted by the modus vivendi forged by the Philippine and Indonesian governments should not, however, be construed as a conscious and stubborn effort to stoke further the fires of contention.

On a larger scale, it must be viewed, instead, as an expression of commitment to the imperative of discovering just avenues towards the resolution of contentions. And on a more limited scale, as a principled initiative at expanding the arena of discussion on an issue crucial to the future of the people of East Timor, the stability of the region, and the integrity of the commitment of the nations of the world to genuine international security and peace.

The comparison may be frail owing to the differences in socio-political conditions, but, in the recent past, when the Philippines lay prostrate under the heels of a dictatorship with

the aspirations of our people for freedom cruelly stifled by the forces of repression, we, too, sought refuge among the freedom-loving peoples of foreign nations hoping that our struggle to break the yoke of the dictatorship may be buoyed by the force of international opinion.

We are, therefore, compelled to remember that the aspiration for freedom is the single, most vital humanizing and civilizing link that unites all peoples of the world despite the barriers of race, culture and creed. It is an aspiration that knows no bounds nor fear. It is an aspiration that imbues the human spirit with the shining glow of courage, dignity, justice and truth.

My presence at this hour, perhaps, can serve as a small contribution to the survival of this aspiration.

My task is to discuss the implications of the East Timor situation on the corpus of international law. I must forewarn you, however, that much of what I will say has been said before. Many learned studies on the subject have been published and discussed, and the most I can contribute is to emphasize those areas I deem to be most significant.

THE RIGHT TO SELF-DETERMINATION

The principle of self-determination has been defined as "the need to pay regard to the freely expressed will of peoples".[1]

United Nations doctrine recognizes that non-self governing territories have the right to self-determination, and that right entitles each territory to choose the status it will assume on

completing decolonisation. Status alternatives include emergences as a sovereign state, free association with an independent state, or integration with a sovereign state, and such other political status "freely determined by a people."[2]

Prior to the full scale invasion of East Timor, the UN General Assembly was already considering a Resolution sponsored by Indonesia and other nations, calling on all states to respect the inalienable right of the people of East Timor to self-determination, freedom and independence.[3]

This reveals that member states of the UN, including Indonesia, supported the position that the people of East Timor were entitled to the rights recognized under the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the International Covenants On Civil and Political, and On Economic, Social and Cultural Rights.

Article 1 of each of the Covenants provides that:

> All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.[4]

Principle IX of UN General Assembly Resolution 1541 of 1960 also provides that:

> Integration should have come about in the following circumstances:
>
> (a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;
>
> (b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage.

The United Nations could, when it deems it necessary, supervise these processes.[5]

These documents offer verifiable standards against which can be measured the validity of Indonesia's actions concerning East Timor.

Three explanations impacting on the principles of self-determination have been offered by Indonesia concerning its efforts to integrate East Timor.

First, that integration is the will of the East Timorese people. Second, that regardless of any explicit consent to integration, the historical, ethnic, cultural and geographical ties between Indonesia and East Timor established the latter as an integral part of the Indonesian archipelago. ,Implicit to this assertion is that administration of East Timor by any authority other than Indonesia would violate Indonesia's territorial integrity. And third, East Timor is not economically viable. It requires direction and assistance from an economically stable state before it can be expected to survive as an independent state.[6]

It must be noted that there has not been a comprehensive legal case presented by Indonesia for its actions. Its positions are gleaned principally from the statements of its representatives in the General Assembly and the Security Council, and from Indonesian publications.[7]

Integration As Free Expression of the East Timorese People's Will

On the assertion that the East Timorese integration with Indonesia is a free expression of will, allegations are rife that the process was stage-managed by Indonesia and did not reflect the true will of the East Timorese. It is also alleged that contrary to Principle IX aforecited, representatives to the Regional Popular Assembly were not impartially or freely conducted, with the election process violating the principle of universal adult suffrage. With the integrity and validity of the RPA in question, its petition for integration similarly becomes questionable.

The absence of verifiable records of the proceedings as well as third party supervision, perhaps by the United Nations, or such nations not known for being sympathetic to Indonesian interests, further exacerbate suspicions on the impartial conduct of the proceedings.

Moreover, it is to be stressed that at the time, no strong claim can be posited that the people of East Timor have attained an advanced stage of self - government with free political institutions to have the capacity to make a responsible choice for integration through informed and democratic processes.

In view of perceived deficiencies in the requisite compliance to Principle IX aforecited, there is ground to assert that grave violations of the right of peoples and states to self-determination have been committed in the case of East Timor. Indeed, the United Nations did not and has not recognized that

the East Timorese exercised self-determination in regard to their integration with Indonesia.

Historic, Ethnic and Cultural Ties

According to Roger S. Clark, the most explicit expression of the ethnic ties argument appears in a November, 1975 press release from the Indonesian Embassy in Washington which argues not only that Timor is geographically part of the Indonesian archipelago, but also that ethnically, the people living in their Portuguese controlled part of the island of Timor (East Timor) are the same as the people of Indonesia. Said statement also maintains that in the past, like Indonesia, Timor was under the administration of the Srivijaya and Majapahit empires.

Srivijaya and Majapahit were earlier recalled by Sukarno in his famous Pantja Sila Speech of June 1, 1945, but up to the time of formal declaration of Indonesian independence in August, 1945, no claim was made to East Timor, and any aspirations for its incorporation were expressly disavowed by Indonesia in the 1950's and 60's.

It must also be recalled that no claim based solely on geograhic contiguity has ever been given the slightest countenance by the United Nations.

Scholarly writings discussing the ancient Indonesian empires support at best a tenuous tributary relationship between Timor and the Majapahit Empire. Clark also notes that the heart of the Indonesian Republic is Java and Sumatra, and the Timorese probably have more in common with the Melanesians of Papua New

Guinea in terms of racial characteristics and language than they do with Javanese and Sumatrans.

Following the ethnic argument, the Indonesian territory may well extend to a substantial part of the Luzon archipelago which some scholars posit as having been part, too, of the expanse of the Srivijaya and Majapahit empires.

Let it, suffice to say, however, that incorporation on the basis of the ethnic argument is at best specious especially if considered in the light of Indonesia's prior actions at recognizing the right of the East Timorese to self-determination before the United Nations and prior denials of intent to claim East Timor as its rightful territory.

Integration Without Prior Consultation

Arguments have been put forth that reintegration without prior consultation can be justified under paragraph 6 of G.A. Res. 1514 (XV) which provides that "Any attempt aimed at the partial disruption of the national integrity of a country is incompatible with the purpose and principles on the Charter of the United Nations."

Perhaps, this can be entertained if a sovereign nation has a well-established historical claim to a territory. A more favored construction consistent with the principle of self-determination would be that it denies a non-self governing territory of an independent country the right to secession. Indonesia's claim to East Timor is frail under this provision especially in the context of its weak historical claim to East

Timor with no convincing proof that the latter ever formed an integral part of a pre-colonial Indonesian empire. . . . .

Economic Nonviability

Resolution 1514 (XV) does not welcome any indication that lack of economic viability is just ground for delaying independence of a non-self governing territory. Paragraph three thereof specifically provides that "inadequacy of political, economic, social and educational preparedness should never serve as a pretext for delaying independence." Acknowledging the dire economic situation of the territory, it must also be noted that in a 1975 U.N. report, the area is decribed as rich in natural resources with which to build a viable economy. On these considerations, East Timor's economic condition is, again, a frail argument to justify incorporation and to deny its people the right to determine and choose their political status.

Right Against Aggression

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The United Nations General Assembly strongly deplored the invasion of December 12, 1975, called for Jakarta's armed forces to be withdrawn, and reaffirmed the people's right to self-determination and independence. In this resolution, the General Assembly referred specifically to Article 2, paragraph 4 of the United Nations Charter, which provides that

> "states should.... refrain in their international relations from the threat or use of force against the territorial integrity or national independence of any state or in any other manner inconsistent with the purpose of the United Nations."

Article I of said Charter also provides that as among the purposes of the U.N. is:

> "to take effective collective measures... for the suppression of acts of aggression or other breaches of the peace"

so as to maintain international peace and security. No one can ably dispute that Indonesia used force against East Timor, and that use of force was against another territorial entity, thereby characterizing the matter as beyond Indonesia's domestic jurisdiction.

The argument that East Timor was, then, not a "state" precariously narrows the construction of the term especially in the context of the overall aims and purposes of the United Nations Charter. The fact that the term "state", was used, and not "member" or "nation" justifiably suggests that a more comprehensive interpretation was intended to include even territorial entities such as East Timor.

Even assuming that East Timor was not a state, Indonesia's invasion runs counter to Articles 1 and 2 of the United Nations Charter which prohibit all acts of aggression and other breaches of the peace, or the threat or use of force in any manner inconsistent with the purposes of the United Nations. It must be noted that the United Nations' purposes encompass developing friendly relations among nations based on respect for the principle of equal rights and self-determination of all peoples. Again, these provisions do not restrict their applicability only to states.

Indonesia has justified its invasion on four grounds: self-

defense, invitation by the East Timorese, future stability of Indonesia and Southeast Asia, and humanitarian purposes.

Again, on the basis of earlier actions of the United Nations condemning the Indonesian invasion and calling for withdrawal of armed forces from the area, as well as verifiable data on alleged incursions of armed East Timorese bands into Indonesian territory, there is cause to doubt the basis of any assertion of self-defense. More so, considering the absence of "armed capability" of the East Timorese to pose a threat to Indonesian national security or stability. The extension of the East Timor threat justifying self-defense to the arena of Southeast Asian stability is, sadly, frail unless it is seen in the context of straining relations between Southeast Asian nations and Indonesia because of disparities in sympathies to the portion that Indonesia has taken on the issue. This is best manifested in the skirmishes between the Indonesian and Philippine governments on the holding of the APCET in the Philippines, which, undoubtedly has caused tension or irritation in Indon-Philippine relations.

The humanitarian justification is sadly, ironic, as there has not been any instance where aggression against peoples and territories served humanitarian ends. The depth and extent of allegations of human rights violations belie the validity of this argument, especially as of late, the Indonesian Government has taken pains to create mechanisms with which to address allegations of human rights violations in the country.

HUMAN RIGHTS

International covenants and customary law uphold the legal and moral duty of all nations to keep sacred the arena of human rights. I am not in a position to discuss the human rights situation in East Timor, except perhaps to state my awareness of allegations on instances where there have been gross and systematic violations of the East Timorese people's right to life, liberty and property, as well as their fundamental rights to freedom of expression and assembly.

There is a wealth of United Nations Conventions, covenants, resolutions and other initiatives which would allow national and international actions for the protection of human rights of all peoples of the world.

But more than the existence of all these laws and conventions assented to by the international community, the bigger concern is the existence of viable and workable mechanisms with which these can all be enforced, and compliance by nations and states be assured beyond the realm of self-serving rhetorics.

On a more realistic plane, while I do not discount the efficacy and effectivity of mechanisms within the international community to ensure compliance, the arena of war for the protection of human rights remains principally within the socio-political systems of every individual member nation of the United Nations. This would include the existence of working and efficient judicial and law-enforcement institutions, ably supported by governmental policies on human rights protection, to ensure the citizens' redress of their grievances and

protection of their rights.

I did not focus principally on the human rights aspect of the East Timor issue, principally because of my conviction that this is subsumed under the more fundamental issues of self-determination and non-aggression. Moreover, to view the East Timor situation as primarily a human rights concern, may bring us to the threshold of disregarding the principles of self-determination and non-aggression where easing or resolving human rights issues may substitute for more determined action on the more fundamental issue of making an informed judgement on the invasion and incorporation of East Timor into Indonesian territory.

CONCLUSION

The basic concern is not whether the people of East Timor are entitled to the right of self-determination or whether they have exercised it. They had and still have the right, by universal agreement and international law.

The right to self-determination, coupled with the right against aggression, are indubitably the most important of all human rights. As aptly echoed in the Covenant on Civil and Political Rights, the effective exercise of a people's rights to self-determination is an essential condition for the genuine existence of the other human rights and freedoms.

The lack of mechanisms for assertion of this right may well have encouraged some states to flout it with impunity, and given courage to victimized states and peoples to resort to armed

struggle. From this vantage point, this right becomes the gridlock of genuine international peace and security.

The assertion of national interest by nations to justify their frail compliance or fidelity to the preservation of this right requires our imperative attention. Nations and governments have found it covenient to invoke the national interest to close their eyes to the violation of the right of other peoples and states to self-determination.

Geopolitical realities specifically in the complexity of increasing interdependence among nations preclude us from making unfavorable conclusions on the wisdom of the national interest argument.

Let it suffice to say, in conclusion, however, that beyond the legal issues and our commitments to international legal duties and norms -- each of us must face up with an irrevocable moral issue -- what is good and just and right for all peoples, and not only for ourselves as individuals and as citizens of separate nations.

In the final analysis, individual conscience from which national conscience and spirits are borne will tell us that, indeed, nothing can ever justify the crime of robbing other people of their birthright to freedom and to determine their own destinies in the manner and through paths they alone have the right to choose.

Thank you and good day.

ENDNOTES

1. See Declaration On the Granting of Independence to Colonial Countries and Peoples, **G.A. Res. 1541** (XV); Declaration On Principles of International Law Concerning Friendly Relations and Cooperation Among States In Accordance with the Charter of the U.N., **G.A. Res. 2625**; Chen, "Self determination as a Human Right", **Toward World Order and Human Dignity**, 198, 1976.

2. See Refs. above.

3. **Decolonisation No. 7: Issue on East Timor**, UN Department of Political Affairs, Trusteehip and Decolonisation, August, 1976.

4. Art. 1, Int'l. Covenant on Civil and Political Rights, Dec. 16, 1966.

5. UN G.A. Res. 1541, Dec. 15, 1960.

6. Culled from Roger S. Cark's "The Decolonisation of East Timor and the United Nations Norms On Self Determination and Aggression", **The Yale Journal Of Public Order**, Vol. 7., .No. 1, 1980.

7. Indonesia Department of Information, **Process of Decolonisation in East Timor** (1976); Indonesia Department of Foreign Affairs, **Decolonisation in East Timor** (1976); Nahar, "Some Historical Notes on Timor Island", **Indonesian News and Views** (Nov. 8, 1975); Indonesian News, Special Issue, **East Timor: Debunking The Myths Around A Process of Decolonisation** (Remarks by Foreign Minister Ali Alatas, Feb. 20, 1992).

8. G.A. Res. 3485 (XXX).

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